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DEPARTMENT OF EDUCATION

34 CFR Chapter I

RIN 1875-AA11

[Docket ID ED-2016-OS-0002]

Secretary's Proposed Supplemental Priority for  
Discretionary Grant Programs

AGENCY: Department of Education.

ACTION: Proposed priority.

SUMMARY: The Secretary proposes an additional priority for use in any appropriate grant program for fiscal year (FY) 2016 and future years. The Secretary proposes to add this priority to the existing supplemental priorities and definitions for discretionary grant programs that were published in 2014. This priority reflects our current policy objectives and emerging needs in education.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email, or those submitted after the comment period. To ensure that we do not receive duplicate copies, please

submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How to use regulations.gov."

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about the proposed priority, address them to Ramin Taheri, U.S. Department of Education, 400 Maryland Avenue, SW., room 5E343, Washington, DC 20202-5930.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Ramin Taheri, U.S. Department of Education, 400 Maryland Avenue, SW., room 5E343, Washington, DC 20202. Telephone: (202) 453-5961 or by email: [ramin.taheri@ed.gov](mailto:ramin.taheri@ed.gov).

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific issues that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of our programs.

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the comments in person in room 4W335, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Program Authority: 20 U.S.C. 1221e-3.

PROPOSED PRIORITY:

This notice contains one proposed priority.

Background:

Children living in concentrated poverty face significant barriers to learning that contribute to poor outcomes for such students in our public schools.<sup>1</sup> In 2012, nearly one-quarter of our Nation's public school students attended schools where more than 75 percent of students

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<sup>1</sup> See, e.g., Coleman, James S., Ernest Q. Campbell, Carol J. Hobson, James McPartland, Alexander M. Mood, Frederic D. Weinfeld, and Robert York. "Equality of educational opportunity." *Washington, DC* (1966): 1066-5684; Rumberger, Russell, and Gregory Palardy. "Does segregation still matter? The impact of student composition on academic achievement in high school." *The Teachers College Record* 107, no. 9 (2005): 1999-2045; Mulligan, G.M., S. Hastedt, and J.C. McCarroll (2012). *First-Time Kindergartners in 2010-11: First Findings From the Kindergarten Rounds of the Early Childhood Longitudinal Study, Kindergarten Class of 2010-11 (ECLS-K: 2011)* (NCES 2012-049). U.S. Department of Education. Washington, DC: National Center for Education Statistics.

were eligible for free or reduced price lunch; in cities, 40 percent of all public school students attend high-poverty schools.<sup>2</sup> Furthermore, most high-poverty schools are located in high-poverty school districts. Students attending high-poverty schools continue to have unequal access to advanced coursework, the best teachers, and necessary funding and supports.<sup>3</sup> Moreover, research shows that States with less socioeconomically diverse schools tend to have larger achievement gaps between low- and higher-income students.<sup>4</sup> Some communities have begun to address these disparities by employing strategies to bring together students from varying socioeconomic backgrounds; for example, more than 90 school districts and charter-

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<sup>2</sup> National Center for Education Statistics. (2014). Digest of Education Statistics, Table 216.6. Available at: [http://nces.ed.gov/programs/digest/d14/tables/dt14\\_216.60.asp](http://nces.ed.gov/programs/digest/d14/tables/dt14_216.60.asp).

<sup>3</sup> See, e.g., Gray, Lucinda, et al. *Educational Technology in U.S. Public Schools: Fall 2008* (Apr. 2010) (NCES 2010-034). U.S. Department of Education, National Center for Education Statistics, available at: <http://nces.ed.gov/pubs2010/2010034.pdf>; Wells, John, and Laurie Lewis. *Internet Access in U.S. Public Schools and Classrooms: 1994-2005* (November 2006). U.S. Department of Education, National Center for Education Statistics, available at: <http://nces.ed.gov/pubs2007/2007020.pdf>.

<sup>4</sup> Mantil, Ann, Anne G. Perkins, and Stephanie Aberger. "The Challenge of High-Poverty Schools: How Feasible Is Socioeconomic School Integration?" *The Future of School Integration* (2012): 155-222.

school operators currently use socioeconomic status as a consideration in student assignment.<sup>5</sup>

In addition to the negative effects of concentrated poverty on education, many schools and communities continue to suffer the effects of racial segregation, and some of our Nation's largest school districts remain starkly segregated along both racial and economic lines. Accordingly, the Department believes that it is imperative for schools, school districts, States, and postsecondary institutions to take lawful steps to increase student-body diversity based on race and ethnicity. Using the Secretary's existing priority on Promoting Diversity, published in the Federal Register on December 10, 2014 (79 FR 73425), we intend to continue our efforts to reduce racial isolation in public schools and to increase racial and ethnic diversity in education. In addition, however, given the growing body of research showing that socioeconomically diverse schools and communities are associated with improved outcomes for disadvantaged children and families,<sup>6</sup> the Department plans to use this

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<sup>5</sup> Potter, Halley, and Kimberly Quick, with Elizabeth Davies. *A New Wave of School Integration: Districts and Charters Pursuing Socioeconomic Diversity*. The Century Foundation, 2016.

<sup>6</sup> Schwartz, Heather. "Housing Policy is School Policy: Economically Integrative Housing Promotes Academic Success in Montgomery County,

proposed priority to continue to focus on increasing diversity, including socioeconomic diversity, in educational settings.<sup>7</sup>

Proposed Priority--Increasing Socioeconomic Diversity in Schools.

Projects that are designed to increase socioeconomic diversity in educational settings by addressing one or more of the following:

(a) Using established survey or data-collection methods to identify socioeconomic stratification and related barriers to socioeconomic diversity at the classroom, school, district, community, or regional level.

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Maryland.” In *The Future of School Integration: Socioeconomic Diversity as an Education Reform Strategy*, edited by Richard D. Kahlenberg, 27-65. The Century Foundation, 2012; see also Chetty, Raj, Nathaniel Hendren, and Lawrence F. Katz. *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*. No. w21156. National Bureau of Economic Research, 2015

<sup>7</sup>Increasing socioeconomic diversity, both independently and in pursuit of racial diversity, is consistent with guidance, issued in 2011 and reaffirmed in 2013 and 2014 by the Department, in conjunction with the U.S. Department of Justice, regarding the use of race and ethnicity to promote diversity and reduce racial isolation. See Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools, available at: <http://www.ed.gov/ocr/letters/colleague-201111.pdf>; Guidance on *Fisher v. University of Texas at Austin*, available at: <http://www.ed.gov/ocr/letters/colleague-201309.pdf>; and Guidance on *Schuetz v. Coalition to Defend Affirmative Action, et al.*, available at: <http://www.ed.gov/ocr/letters/colleague-201405-schuetz-guidance.pdf>.

(b) Developing, evaluating, or providing technical assistance on evidence-based policies or strategies designed to increase socioeconomic diversity in schools.

(c) Designing or implementing, with community input, education funding strategies, such as the use of weighted per-pupil allocations of local, State, and eligible Federal funds, to provide incentives for schools and districts to increase socioeconomic diversity.

(d) Developing or implementing policies or strategies to increase socioeconomic diversity in schools that--

(i) Are evidence-based;

(ii) May be carried out on an intra-district, inter-district, community, or regional basis;

(iii) Demonstrate ongoing, robust family and community involvement, including a process for intensive public engagement and consultation;

(iv) Reflect coordination with other relevant government entities, including housing or transportation authorities, to the extent practicable;

(v) May be based on an existing, public diversity plan or diversity needs assessment; and

(vi) May include, for example--

(A) Establishing school assignment or admissions policies that are designed to give preference to low-



income students, students from low-performing schools, or students residing in neighborhoods experiencing concentrated poverty to attend higher-performing schools;

(B) Establishing or expanding schools that are designed to attract substantial numbers of students of different socioeconomic backgrounds, such as magnet or theme schools, charter schools, or other schools of choice.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the Federal Register. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority:

We will announce the final priority in a notice in the Federal Register. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive

Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in

Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this proposed priority only on a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected the approach that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from regulatory

requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Costs and Benefits:

The proposed priority would not impose significant costs on entities that would receive assistance through the Department's discretionary grant programs. Additionally, the benefits of implementing the proposal contained in this notice outweigh any associated costs because it would result in the Department's discretionary grant programs selecting high-quality applications to implement activities that reflect the Administration's policy focus.

Application submission and participation in a discretionary grant program are voluntary. The Secretary believes that the costs imposed on applicants by the proposed priority would be limited to paperwork burden related to preparing an application for a discretionary grant program that is using the priority in its competition. Because the costs of carrying out activities would be paid for with program funds, the costs of implementation would not be a burden for any eligible applicants, including small entities.

Regulatory Flexibility Act Certification: For these reasons as well, the Secretary certifies that these

proposed regulations would not have a significant economic impact on a substantial number of small entities.

Intergovernmental Review: Some of the programs affected by this proposed priority are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department

published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the Federal Register by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated:

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John B. King, Jr.,  
Secretary of Education.

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